

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Nooksack Branch
Nooksack, Washington 98276
(City of Nooksack, Petitioner)

Docket No. A2011-17

**RESPONSE OF UNITED STATES POSTAL SERVICE TO PETITIONER'S
APPLICATION FOR SUSPENSION OF DISCONTINUANCE FOR THE
NOOKSACK BRANCH, NOOKSACK, WASHINGTON 98276
(May 26, 2011)**

On May 17, 2011, Petitioner filed an application to suspend the discontinuance of the Nooksack Branch (the "Application").¹ By means of Order No. 734 (May 19, 2011), the Postal Regulatory Commission (Commission) docketed correspondence from the City of Nooksack, Washington, assigning PRC Docket No. A2011-17 as an appeal pursuant to 39 U.S.C. § 404(d). The Nooksack Branch is scheduled to close on May 27, 2011. As explained below, Petitioner's Application should be denied.

As an initial matter, this appeal is not within the scope of the Commission's jurisdiction under 39 USC § 404(d). The Nooksack Branch is not an independent Post Office so Commission jurisdiction under 39 U.S.C. § 404(d) does not attach. As the Commission is well aware, the Postal Service understands that the Commission lacks subject matter jurisdiction under 39 U.S.C. § 404(d) to review Postal Service decisions regarding the discontinuance of stations and branches. *See generally* Reply Brief of the United States Postal Service, section III (pp. 6-12), PRC Docket No. N2009-1 (December 16, 2009);

¹ Application for Suspension of Closure of the Nooksack Post Office, Nooksack, Washington 98276, PRC Docket No. A2011-17 (May 17, 2011).

Comments of United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), PRC Docket No. A2010-3 (April 19, 2010).² In the Postal Service's view, the Post Office discontinuance regulations in 39 C.F.R. Part 241.3 and Handbook PO-101 do not apply to the Nooksack Branch because the Nooksack Branch is not an independent Post Office. Similarly, the Commission's Rules of Practice for Post Office closings found in section 3001.110 et seq. do not apply in this instance. Petitioner fails to allege facts that constitute a condition precedent to any jurisdiction of the Commission under section 404. 39 U.S.C. § 404(d)(5).

Second, even assuming section 404(d) were interpreted to embrace the discontinuance of stations and branches, this proceeding does not involve a loss of retail services to the community for reasons that match those in PRC Docket No. A2010-3. In that proceeding, the Commission concluded that the section 404(d) procedural requirements apply only where postal customers lose access to postal services, and postal customers do not lose access to postal services where alternate retail facilities are located in "close proximity" to the discontinued station.³ Because of the close proximity of other postal facilities and the availability of postal services through <http://www.USPS.com/> and other expanded access options, the discontinuance of the Nooksack Branch will not cause postal customers to lose access to postal services.⁴ Consequently, the Postal Service submits that the section 404(d) procedures do not apply on this separate basis. Therefore, the relief requested by the petitioner is not, as a matter of law,

² In turn, the Postal Service is well aware that the Commission claims a broader jurisdiction.

³ PRC Order No. 477, Order Dismissing Appeal, Docket No. A2010-3, June 22, 2010, at 7-8.

⁴ The Everson Post Office is located within 1 mile of the Nooksack Branch.

available to Petitioner and should be denied on these grounds alone. The Postal Service will respond to these matters in greater detail in its Notice due on May 31, 2011.

Third, in earlier station and branch discontinuance appeals, the Commission has declined to grant petitioner applications for suspensions of scheduled closings. See PRC Docket No. A2011-1 (application for suspension filed on October 19, 2010; station closed on January 25, 2011; order affirming final determination issued on February 15, 2011); PRC Docket No. A2011-4 (application for suspension filed on November 22, 2010; station closed on January 15, 2011; order affirming final determination issued on March 16, 2011); PRC Docket No. A2011-5 (application for suspension filed on December 6, 2010; station closed on January 15, 2011; order affirming final determination issued on March 31, 2011). In these cases, the Commission did not interfere with the Postal Service's completion of scheduled closures even though the Commission had not ruled on petitioners' appeals. See *id.*

Fourth, the Postal Service investigated the facts pertaining to the Nooksack Branch; the relief requested by the petitioner is not practicable to implement at this late stage and would significantly frustrate postal operational plans. The Postal Service has already made numerous arrangements to implement the final determination, including the following:

- Provided notice to the lessor of the property where the Nooksack Branch is located, a certain number of days in advance of May 27,

2011— in accordance with the lease - that the Postal Service would be terminating its lease;

- Arranged for the premises to be vacated in a timely fashion with all postal owned equipment removed;
- Made arrangements for relocating affected employees currently working at the Nooksack Branch, in accordance with applicable standards; and
- Scheduled various operational changes to coincide with the discontinuance of the Nooksack Branch on May 27, 2011.

Thus, Postal Service operational plans for an efficient transition would be frustrated and costly if the Commission were to grant the requested relief. Also, many customers of the Nooksack Branch have made and scheduled their own adjustments to accommodate their needs to send and receive mail based on the scheduled May 27, 2011 discontinuance.

For the reasons set forth above, Petitioner's application for suspension of the scheduled closing of the Nooksack Branch should be denied.

Respectfully submitted,

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